

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON DC 20268-0001

Postal Box Service Enhancements

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Docket No. MC2012–26

COMMENTS OF NATIONAL ALLIANCE OF RETAIL SHIP CENTERS ON POSTAL
SERVICE ELECTIVE FILING IN
RESPONSE OF THE UNITED STATES POSTAL SERVICE TO ORDER NO. 1366
(August 7, 2012)

Executive Summary

Following this Commission’s issuance of Order 1366, the United States Postal Service (USPS) filed on July 9, 2012 an “Elective Filing” which purports to comply with the Commission’s Order requiring the USPS to provide the information required by Commission regulations (39 CFR 3020.).¹ While the USPS did file this “Elective Filing” on the last possible date, the filing does not provide the information required by Order 1366 under the Commission Regulations. Instead of filing substantive information on costs and implementation of the new services (called “enhancements” by the USPS), the filing maintains the same line of reasoning as when the USPS first moved to include these services without bringing these new services to the Commission. The USPS also claims to avoid these requirements by reference in a footnote that this information had been previously filed in USPS Governors’ Decision 11-8 ² and a response to a prior Commission question on that part of that Governors’ Decision. Specifically:

1. No cost information is or has been provided in any pleading before the Commission in any Docket. The USPS continues to pretend that these changes have no costs and/or were already contemplated in prior costs filings in 2011—even though it had neither provided notice to the Commission or the public that or how it would offer enhancements. The bare reference in USPS Governors' Decision 11-8 merely states that an unspecified portion of the (PO Box) fee in the competitive services may be deducted

1 USPS Elective Filing Docket No. MC2012–26

2 USPS Governors Decision 11-8, Nov. 5, 2011

to “serve as postage on packages delivered to competitive Post Office box service customers after being brought to the Post Office by a private carrier”³

2. No description is provided by the USPS of how many competitive locations are to offer these services. The only information is a vague statement that some of the competitive locations may not offer these services.
3. No explanation of why the USPS has decided to offer a distinct addressing mechanism—street address with # designation such as 500 Main St. #59—described in the Customer Agreement for PO Box Service attached to the USPS filing.
4. Even more important, no explanation as to why the USPS as government regulator will continue to regulate Commercial Mail Receiving Agencies (CMRAs) of which there are over 10,000. As the USPS knows, in its parallel role as regulator of the US mail, it has required by regulation for over 12 years that CMRAs must undertake a variety of costs to operate including paying the cost of return mail and the inability of CMRA customers to file a change of address form when moving to another address.⁴

Additionally, the USPS has stated that if it is able to reduce delivery from six days per week to five days there will be no delivery to CMRA locations on the sixth day even though the USPS will accept delivery of mail and packages at its competitive Post Office boxes. This is yet another example of unfair competition from the regulator of CMRA. If 5-day delivery is implemented, then these competitive PO boxes using the street address designator would have a tremendous advantage by offering 6-day mail delivery while CMRAs and their customers would only receive 5-day mail delivery.

For all of these reasons, NARSC requests that its Complaint be reinstituted or that this process be used by the Commission to require the USPS to comply with the requirements of federal postal law and with Commission regulations. Specifically:

1. Require the USPS to file detailed cost information on how much it will cost to implement this new program including whether USPS must spend market dominant or competitive service funds to purchase equipment for Real Mail Notification (an internet/email based notification program) and accepting packages from private carriers.

³ id at p.142

⁴ Domestic Mail Manual 508.1.8.3

2. Require the USPS to eliminate the USPS CMRA regulations if the Commission approves these new services which the USPS refers to as “enhancements.”

It is patently unfair and in violation of postal laws and regulation that the regulatory powers of USPS can be used to create an unfair competitive environment for CMRAs. The USPS has instituted new and costly improvements to its competitive PO Box services while still requiring CMRAs and their customers to suffer costly requirements such as:

1. **CMRA Mail forwarding**: The requirement for CMRAs to handle mail for 6 months for departed or cancelled customers. CMRAs must forward all mail and apply new postage to any item that is forwarded during this term.⁵

USPS mail forwarding: Mail will be forwarded by the USPS presumably under their market dominant, noncompetitive mail subsidy. The USPS has provided no information to the Commission to explain how the customers of “enhanced” competitive postal boxes will provide for change of address. It is logical to assume that the USPS will allow change of address forms which includes payment of the costs for change of address under its market dominant funding mechanism.

- a. As noted by the Public Representative, this is the exercise of anti-competitive use of regulatory powers of the USPS and most likely violates the antitrust laws which the Congress forbids under postal laws and regulations.⁶
2. **CMRA change of address**: CMRA customers are prohibited by USPS regulation from filing a change of address form with the USPS. This combined with the USPS regulatory requirement that the CMRA pay the costs for mail forwarding for six months, is a devastating combination of USPS regulation in an anti-competitive manner.⁷

USPS Change of Address: No change from existing practice with market dominant mail paying the cost of forwarding.

3. **CMRA Quarterly List Requirement**: The CMRA must provide to the postmaster a quarterly list (due January 15th, April 15th, July 15th, and October 15th) of its customers

⁵ Domestic Mail Manual 508.1.3b

⁶ Comments of Public Representative at 5. see footnotes 9-12. See also 39 USC 409(e)

⁷ Domestic Mail Manual 508.1.8.3(a)

in alphabetical order cross-referenced to the CMRA addressee delivery designation. The list must contain all new customers, current customers, and those customers who terminated within the past 6 months, including the date of termination.⁸

- a. This provides an unprecedented opportunity for USPS to compete with CMRAs by soliciting customers from a CMRA. While this requirement has been in regulation since 1999, only now has the USPS undertaken direct competition with its transfer of thousands of PO boxes to the competitive fund.

USPS: No comparable requirement. CMRAs do not have access to a list of USPS PO Box holders.

Policy Behind CMRA Regulations Has Been Changed

By These USPS “Enhancements”

In its elective filing, the USPS maintains that there is no cost and no change by its enhancements:

“... the Postal Service’s belief (is) that the service enhancements merely allow customers to use their mail receptacles more efficiently, and do not change the definition of P.O. Box Service. Consequently, the service enhancements at issue in this proceeding have not created a new product.....”⁹

Thus, the USPS, while filing a document, refuses to provide the Commission with the information which it needs to determine if its elective filing can resolve the issues of what the nature of these “enhancements” are.

The USPS staunchly refuses to provide any financial information regarding the costs of these enhancements. What does the USPS state about these enhancements?

1. Market dominant product?--USPS states no.¹⁰ Yet, the USPS provides no information on its costs for introducing, establishment and maintaining these enhancements.
 - a. How much does it cost to solicit customers and implement the new enhancements?

⁸ Domestic Mail Manual 508.1.8.3(c)

⁹ USPS Elective Filing, Attachment A - p. 5.

¹⁰ Id. Attachment A - p. 5.

- b. How many labor hours are involved in implementing these enhancements?
- c. How much are the costs of forwarding mail from the customers which are subject to the enhancements? Are these costs paid for by the market dominant fund or by the competitive fund?

How does this square with the description by the USPS of the difference between a USPS PO Box customer and a CMRA mailbox customer? On its own website, the USPS states as follows:

“• Why do CMRAs have different policies than Post Office Box holders? Post office box holders are customers of the Postal Service and, unlike CMRA; customers do not receive mail services of convenience external to the Postal Service. The CMRA and its customer agree (Form 1583) to payment of new postage to redeposit mail delivered to a CMRA. The Postal Service believes this requirement (existing since September 1960) remains appropriate and fair.”¹¹

Now that the USPS has “enhanced” its services, how is the CMRA customer different from a USPS PO Box customer? The answer is that the CMRA customer must, by regulation, pay for services that any other consumer, box holder or non-box holder alike, receives as a USPS customer.

The USPS states the following about the enhancements:

1. Not a special classification because these are not part of market dominant products.
2. Not a competitive product that is not generally applicable.—USPS states the enhancements are generally applicable.
3. The Competitive PO Box Service is a postal product.
4. No additional mail classification schedule needed:
 - a. Real Mail Notification—technological development—no costs figures provided. Does this mean that no costs are or will be involved in developing or deploying this technology?

¹¹ [http://faq.usps.com/eCustomer/iq/usps/request.do?create=kb:USPSFAQ&view\(\)=c%5Bc_usps0729%5D](http://faq.usps.com/eCustomer/iq/usps/request.do?create=kb:USPSFAQ&view()=c%5Bc_usps0729%5D)

- b. Development of technology often if not almost always includes costs. If so, how are these costs covered since the USPS proposes no Mail Classification or increase in fees to the Customer.¹²
5. Street Addressing: Included in this enhancement is the acceptance of private delivery packages from other carriers such as Fed Ex and United Parcel Service. Is this part of the extra received mail services of convenience external to the Postal Service described in the Domestic Mail Manual? If so, what are the costs of this acceptance of possible thousands or tens of thousands of packages for PO Boxes? Where will these packages be stored? What is the cost of storage, acceptance and real mail notification for acceptance? If there are costs, are these covered by the dominant market fund?¹³

The Postal Service belatedly claims that it provided the information in previous filings. Even if the references are accepted by the Commission as a legitimate filing, there is no information on what the costs of accepting of the package service will be and how it will be deducted from the PO Box fees ¹⁴ except to state:

“Payment for this delivery will come out of the Post Office box fees at that office, reflecting a “recipient pays” model for postage payment.”¹⁵

What is the payment? How much and for what service? Will it be different for different Carriers? The USPS has an ongoing relationship with FedEx. Will the costs for FedEx packages be charged less than for UPS packages and will acceptance of international packages be charged differently? What are the total aggregate costs of accepting a package? Will there be a different cost for customers who do not receive private package delivery from those which do?

The Customer Service Agreement which was attached to the Elective Filing does not even mention Private Package Delivery. There is no information as to how the USPS will deliver these services and at what costs. ¹⁶

Is this the manner in which the USPS “enhances” its PO Box competitive service - by adding new, potentially costly enhancements with no explanation of how the costs will be covered?

¹² USPS Elective Filing, Attachment A. pp. 5-6

¹³ *Id* at p. 7

¹⁴ *Id* at p.8 fn.14

¹⁵ *Id* at p.8

¹⁶ USPS Elective Filing, Attachment C.

CONCLUSION

NARSC represents the interest of approximately 10,000 Commercial Mail Receiving Agencies in all 50 states and all US territories. These are small businesses owned and operated by individual entrepreneurs. The business model is to provide services ancillary to those which the USPS provides. In 1997, NARSC and others, as part of the group called the Coalition Against Unfair USPS Competition, filed a complaint regarding a new USPS Pack and Send Service which the USPS also contended was not a postal service and therefore was not subject to regulation by the Postal Rate Commission.¹⁷

Following a laborious Complaint process involving two Dockets, the USPS finally received a rate for its Pack and Send Service. Based on that new rate, the USPS Governors declined to implement the rate and the Service.¹⁸

This is a different but similar situation. The USPS is attempting to compete directly against the Mail and Parcel businesses which provide Private Mail Box rental along with ancillary services. Just as in the 1996-1997 dockets, the USPS is trying to avoid providing any cost information which will allow the public to know if the costs of these new enhancements, which are postal services under any reasonable definition, are covering their costs.

The USPS continues to regulate the over 10,000 CMRAs, requiring additional costs to the CMRAs, while it institutes these new competitive services. This is not what the Postal Accountability and Enhancement Act contemplated. In fact, the PAEA specifically forbids this by applying the antitrust statutes in instances like these.¹⁹

NARSC agrees with the legal and policy statements in the recent filing by the Public Representative. Further, NARSC endorses and urges the USPS to adopt the proposal or further action in that Conclusion:

“... the Public Representative believes that the Postal Service’s proposal raises serious issues related to unfair competition. Given these issues, the Public Representative urges

¹⁷ See MC 97-5

¹⁸ See USPS Governors Decision 96-1.

¹⁹ 49 USC 409(e)

the Commission to refrain from approving the proposed changes until those issues are resolved..”²⁰

NARSC and its members request prompt and direct relief and action from the Commission:

1. Suspend or prohibit the USPS from offering these enhanced services because they have not been previously presented to the Commission and the public for comment and cost analysis.
2. Direct the USPS to eliminate or suspend the CMRA regulations in the Domestic Mail Manual 508.1.8.3 until a decision has been made on whether these enhanced services will be allowed.
3. If the Commission determines that it cannot suspend or prohibit the USPS from continuing its regulations, then refer this matter to the US Department of Justice for investigation of whether the USPS is in violation of the PAEA and the antitrust laws of the United States.
4. Reinstitute the Complaint now held in abeyance and require the USPS to answer the Complaint including filing detailed cost information so the public and the Commission can determine whether the costs of the new postal services are properly priced, or in the alternative, allow the filing of a new complaint.

Respectfully Submitted

/s/ Bruce Bernstein

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